IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Mohd. Aslam
vs.
State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.1782/2002 UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 01st November, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

REPORTABLE

Mr.Sangeet Lodha, Advocate for the petitioner.
Mr.Manoj Bohra Advocate for
Mr.K.N. Joshi, Advocate for the respondents.

BY THE COURT

Under challenged in this writ petition is the order dated 20th March, 2002 passed by the respondent No.1 and the consequential

order dated 07th May, 2002 passed by the respondent No.2 whereby the petitioner's earlier absorption on the post of LDC was changed and he was ordered to be absorbed as Sahayak Parcha Vitarak.

The petitioner entered in the services of the respondent Municipal Board, Sirohi as Sub Nakedar having been appointed as such on 12th June, 1989. He was later confirmed on this post vide order dated 13th July, 1990. When octroi was abolished by the State Government w.e.f. 01st August, 1988, all those working in connection with realization of octroi in different Municipalities of the State were declared surplus and thus the petitioner was also rendered surplus. The government however directed their absorption/adjustment on various pots in different Local Bodies of the State. The Chairman and the Executive Officer of the Municipal Board, Sirohi at this stage by letter dated 20th August, 2001 requested the Director, Local Bodies for Rajasthan, Jaipur for permission to absorb the petitioner on the post of LDC. Requisite qualification for regular appointment on the post of LDC is Matric or its equivalent qualification which the petitioner possessed. The Municipal Board, Sirohi in its general meeting held on 31st August, 2001 passed a resolution thereby deciding to absorb the petitioner on the vacant post of LDC and the matter was referred to the Government for its approval. The Director, Local Bodies of the State

by his communication dated 08th February, 2002 granted approval for absorption of the petitioner on the post of LDC and accordingly the respondent Board passed an order dated 25th February, 2002 whereby the petitioner was appointed on the post of LDC and he joined as such on the same date.

The Under Secretary to the Government in its department of Local Self Government by his order dated 20th March, 2002 cancelled the earlier absorption order of the petitioner as LDC made by order dated 25th February, 2002. Pursuant to this order respondent Board passed an order on 07th May, 2002 whereby the petitioner was now ordered to be absorbed on a lower post of Sahayak Parcha Vitarak. It is this background of the matter that the present writ petition has been filed with the prayers extracted above.

The respondents have contested the writ petition and supported the impugned orders. According to them, the employees who were declared surplus consequent upon abolition of octroi were required to be absorbed on equivalent post as per the policy decision of the government. Since the petitioner was working on the post of Sub Nakedar, his earlier absorption on higher post of LDC was legally not correct. He has now been absorbed on the post of Sahayak Parcha Vitarak which is an equivalent post. The decision of the Government was based in over all public interest so that large

number of employees in the different municipalities were not rendred jobless and therefore they were decided to be absorbed on equivalent post in different local bodies of the State, keeping in view their eligibility qualification for a given post. It has been stated that apart from Sahayak Parcha Vitarak, other post equivalent to the post of Sub Nakedar are the posts of Daroga, Moharrir, Helper Gr.I, Firemen, Lineman, Wireman, Fitter, Karigar, Choudhary, Sahayak Choudhary etc. Although earlier approval was granted for absorption of the petitioner on the post of LDC but on re-examination of the matter, the Government came to the conclusion that the post of Sub Nakedar was not equivalent to the post of LDC and therefore directions were issued for absorption of the petitioner as per rules. It has therefore been submitted that there was no legal infirmity in the order passed by the respondents.

The petitioner has filed a detailed rejoinder in response to the reply filed by the official respondents. The petitioner has contested the position that all those declared surplus have been absorbed only on equivalent post. The petitioner has given instances of Sarva Shri Yogesh Kumar Dave, Narayandan Adha and Mahendra Singh who were holding the post of Sub Nakedar/Naka Guard yet they have been absorbed on the post of Gram Sevak-cum-Paden Sachiv in different Gram Panchcyats, carrying the pay scale of Rs.3200-4590

which is even higher then the pay scale admissible to the post of LDC i.e. Rs.3050-4590. It has been contended that while the pay scale of Sub Nakedr is Rs.2950-4475 and that of Naka Guards Rs.2650-4000, as compared to these two the pay scale of Gram Sewak is much higher i.e. 3200-4900. The petitioner has placed on record as many as six documents respectively dated 25th October, 199, 15th March, 2000, 28th December, 2001, 07th March, 2002, 18th August, 2000 and 01st October, 2001 as Annexures-11 to 16 to substantiate his assertion that a large number of other employees in different Municipalities who were originally working as Nakedar, Sub Nakedar and Naka Guard have been absorbed on higher post including on the post of Gram Sewak. There are large number of such persons who were declared surplus and were later absorbed on higher post. The argument of the respondents that the absorption was to be made only on equivalent post is therefore not factually correct.

I have heard Shri Sangeet Lodha, learned counsel for the petitioner and Mr. Manoj Bohra, learned counsel for the respondents and perused the record.

Shri Snageet Lodha, learned counsel for the petitioner argued that the petitioner was substantive employee of the respondent Board and therefore the Board by its unanimous resolution had

rightly decided to absorb the petitioner on the post of LDC. When this resolution was approved by the Government, there was no reason to later rescind the same particularly when the consequential order for absorption of the petitioner was passed and he having joined on such post had worked for a fairly long spell of time. Shri Lodha argued that a right had come to accrue to the petitioner on account of his absorption for continuing on the post of LDC. No opportunity of hearing was provided to the petitioner nor any notice was given to him prior to his reversion. Shir Lodha argued that the reasons assigned by the respondents for passing the impugned orders are not only sustainable in law but are wholly unfounded being factually incorrect. The so called policy decision to absorb the service personnel from the octroi sections of various Municipalities was no where to be found inasmuch as a large number of employees whose details the petitioner has produced along with rejoinder were absorbed on much higher post of Gram Sewak carrying the pay scale of Rs.3200-4900, whereas they were holding the post of Sub Nakedar in the pay scale of Rs.2950-4475 and Naka Guard in the pay scale of Rs.2650-4000. Absorption of the petitioner was made by the Board by its resolution keeping in view utility of the petitioner, clear the vacant post and the qualification held by the petitioner. Cancellation of such order and consequential absorption

of the petitioner on the lower post is absolutely illegal. The impugned orders are therefore liable to be set aside.

On the other hand, Shri Manoj Bohra, learned counsel for the respondents reiterated his arguments with reference to reply to the writ petition already enumerated above. He argued that the petitioner could not claim absorption on a higher post because he as per the policy of the Government could have been absorbed only on an equivalent post. It was argued that the earlier order of approval passed by the Government was based on ignorance of such policy and thereafter the Government upon reconsideration of the matter decided to revoke the same. There was therefore no illegality in the order passed by the respondents.

I have considered the rival arguments advanced by learned counsel for the parties and perused the record.

Some facts which have not been denied and cannot be denied need to be noted first. The petitioner was already employed with the respondent Board on the post of Sub Nakedar. When the Octroi was abolished, the Government decided to absorb all those declared surplus in various local bodies of the state which included not only Gram Panchayat but Municipalities too. There was a clear vacnat post of LDC available with the respondent Board. The petitioner fulfills the eligibility qualification for appointment on the post of LDC.

The respondent Board resolved unanimously to absorb the petitioner on the post of LDC. This was conveyed to the Government jointly by the Chairman of the Board and Executive Officer by their letter dated 31st December, 2001 along with the copy of the said resolution. Upon consideration of the entire matter the Government by its order dated 08th October, 2002 granted sanction and approval for absorption of the petitioner on the post of LDC within the respondent Board itself. The consequential order of absorption of the petitioner was passed by the respondent Board on 25th April, 2000. The petitioner thereafter submitted his joining on the post of LDC on 25th February, 2002 itself. That notwithstanding the specious plea set up by the respondents that the policy decision of the Government was to absorb the surplus personnel only on equivalent post, absorption of a larger number of surplus employees made by the respondents by various orders produced by the petitioner with his rejoinder depict a completely contrary picture.

The order dated 25th October, 1999 (Annexure-11) indicates that one Deen Chand declared surplus from the post of Sub Nakedar of Municipal Board, Phalodi was absorbed as Gram Sewak in Panchayat Samiti Ahor (in district Jalore). Similarly one Sabla Ram of Municipal Council, Jaisalmer who too was Sub Nakedar was absorbed as Gram Sewak and posted in Panchcyat Samiti, Ahore.

Same was the case of Chandra Sekhar Sub Nakedar of Municipal Board, Jaisalmer who too was absorbed as Gram Sewak, Ahore, Govind Kumar and Shyam Dan both Sub Nakedars of Municipal Board, Sojat were also absorbed as Gram Sewak in Panchayat Samiti Ahor.

The Order dated 15th March, 2000 (Annexure-12) also indicates that one Shashidhar Calla Shekh Mohammad Yunus, Gopal Joshi, Ashok Kumar Vyas all Sub Nakedars, Municipal Corporation, Jodhpur and Vijay Das Sub Nakedar, Pali and Ashok Kumar Vyas Sub Nakedar of Municipal Board, Sirohi were absorbed on the post of Gram Sewak in Panchcyat Samiti, Sanchor of district Jalore.

In the order dated 28.12.2001 (Annexure-13) wherein Narendra Kumar Sharma, Santosh Kumar Yadav, Mahesh Kumar Dixit and Ram Niwas then working on the post of Naka Guard a post lower than the post of Sub Nakedar, yet they were absorbed on the post of Gram Sewak. Another Sub Nakedar declared surplus from respondent-Municipal Board, Sirohi itslef namely Yogesh Kumar Dave was also absorbed by order dated 07th March, 2002 (Annexure-13) as Gram Sewak, Panchcyat Samiti, Sirohi. There were as many as 34 Naka Guard whose names are mentioned in order dated 18th August, 2002 (Annexure-15) who were all declared surplus from various Municipalities and were absorbed as Gram Sewak. In this

order name of as many as five Sub Nakedars are mentioned who were all absorbed on the post of Gram Sewak. Series of undeniable facts does not stop here. There is an additional factor to be taken note of that the pay scale of Sub Nakedar is Rs.2950-4475 and that of Naka Guard is Rs.2640-4000 and whereas the pay scale of Gram Sewak-cum-Paden Sachiv is Rs.3200-3900 which is even higher than the post of LDC which carries the pay scale of Rs.3050-4590.

All these undisputed facts belies the stand of the respondents that there was any policy decision to absorb the surplus personnel only on equivalent post much less the factum of three of the fellow Sub Nakedars of the petitioner who were declared surplus from Municipal Board, Sirohi itslef and were absorbed on the post of Gram Sewak which is a post higher than even the post of LDC, not only raise a clear doubt about the correctness of this so called policy decision also stare into bone fides of their stand.

What is more, the Municipal Board, Sirohi following 74th constitutional amendment in Chapter IX A of the Constitution should now be taken to have been granted some semblance of autonomy particularly when it unanimously resolved to absorb the petitioner on the vacant post of LDC for which he was fully eligible. Such a resolution was forwarded to the Government for its approval and Government approved of the same. Upon receipt of the approval

from the Government, consequential order of his absorption was passed and he joined pursuant thereto. Having joined he worked for few months. It was thereafter that the respondents by impugned order cancelled the earlier order of his absorption on the post of LDC and subsequently passed another order absorbing on the post of Sahayak Parcha Vitark. Cumulative effect of these two orders is that while absorption of the petitioner on the post of LDC has been withdrawn which order has seriously prejudiced his interest and has as obviously affected his status in work. This order was passed without service of an action inspired notice on the petitioner inasmuch as without providing him any opportunity of hearing. To add salt to the injury, the petitioner was later on absorbed the post of Sahayak Parcha Vitarak which by all standards was a post much inferior to that of Gram Sewak given to his fellow Sub Nakedars declared surplus from the very same municipality and were absorbed as Gram Sevak a post higher than the post of LDC. The impugned order cancelling his earlier absorption thus clearly amounted to reversion on an inferior post. This was an illegal order having been passed in utter disregard of principles of natural justice, inasmuch as subsequent order absorbing him on the post of Sahayak Parcha Vitarak was in peculiar facts of the present case practiced hostile discrimination against the petitioner particularly

when other Sub Nakedars from very same Municipal Board, Sirohi were absorbed else where as Gram Sewak. In my considered view, both these orders being illegal are therefore not sustainable in law.

In the result, the writ petition succeeds. Impugned order dated 20th March, 2002 and order dated 07th May, 2002 are quashed and set aside. The petitioner shall be entitled to all consequential benefits. The compliance of this judgment be made within a period of three months from the date of service of its copy. There shall be no order as to costs.

[MOHAMMAD RAFIQ],J.

A.K.Chauhan/-